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THOMAS HAUSCHILD  
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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHSN DISTRICT OF CALIFORNIA**  
10

11  
12 THOMAS HAUSCHILD,  
13 Plaintiff,

14 v.

15  
16 CITY OF RICHMOND; CHRISTOPHER  
MAGNUS; and DOES 1 through 10, inclusive,  
17 Defendants.  
18

**Case No.**

**COMPLAINT FOR DAMAGES,  
EQUITABLE AND/OR INJUNCTIVE  
RELIEF**

VIOLATIONS OF THE CIVIL RIGHTS  
ACT, 42 U.S.C. § 1983; VIOLATIONS OF  
THE FAIR EMPLOYMENT AND  
HOUSING ACT, GOVERNMENT CODE §  
12940 ET SEQ; VIOLATIONS OF THE  
CALIFORNIA CONSTITUTION

**JURY TRIAL DEMANDED**

1 Plaintiff THOMAS HAUSCHILD complains and alleges as follows:

2 **PARTIES AND JURISDICTION**

3 1. Plaintiff THOMAS HAUSCHILD ("Plaintiff") is, and at all relevant times hereto,  
4 has been a resident of the State of California.

5 2. Plaintiff is informed and believes and thereby alleges that Defendant CITY OF  
6 RICHMOND (hereinafter "City of Richmond" or "Defendant"), is and at all relevant times  
7 hereto, was a public entity that operated in the State of California, County of Contra Costa.

8 3. Defendant City of Richmond, including its departments, units, and/or political  
9 subdivisions, is and at all relevant times hereto, was an employer operating as a public entity  
10 within the State of California, County of Contra Costa, who regularly employed more than 15  
11 persons.

12 4. Defendant City of Richmond is a city municipality located within the State of  
13 California and doing business as a government entity under color of state authority and law.

14 5. Defendant CHRISTOPHER MAGNUS ("Magnus" or "Defendant") is an  
15 individual whose residence is located in the State of California. Defendant Magnus is a  
16 supervisor and/or managerial employee of the City of Richmond. For purposes of the cause of  
17 action under the Civil Rights Act, Defendant Magnus is being sued in his official and/or  
18 individual capacity acting under color of law.

19 6. This Court has jurisdiction and venue over this action in that Defendants employed  
20 Plaintiff within this judicial district in the State of California, and Plaintiff is seeking relief under  
21 federal law, 42 U.S.C. Section 1983. This Court has supplemental jurisdiction over the state law  
22 claims, in that they arose from the same common nucleus of operative facts, as the federal claims.

23 7. Plaintiff is unaware of the true identity, nature and capacity of each of the  
24 defendants designated herein as a DOE, whether individual, corporate, associate or otherwise,  
25 who therefore sues such defendants by fictitious names pursuant to California Code of Civil  
26 Procedure §474. Plaintiff is informed and believes and thereby alleges that each of the  
27 defendants designated herein as a DOE is in some manner responsible for the damages and  
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1 injuries as are alleged in this Complaint. Upon learning the true identity, nature and capacity of  
2 the DOE defendants, plaintiff will amend this Complaint to allege their true names and capacities.

3 8. Plaintiff has exhausted all administrative remedies, including obtaining a right-to-  
4 sue notice from the Department of Fair Employment and Housing, and Plaintiff has filed this  
5 complaint within one year of receiving the DFEH right to sue letter. Additionally, Plaintiff filed a  
6 timely government tort claim with the Defendants, which has been rejected.

7 9. Unless otherwise indicated as acting in individual capacity, Plaintiff is informed  
8 and believe, and thereby allege that each of the defendants herein were at all times relevant  
9 hereto, the agents, representatives, servants and employees of the remaining defendants, and were  
10 acting at least in part within the course and scope of such relationship, and that the wrongful acts  
11 alleged herein were committed by such defendants, and each of them.

### 12 **FACTUAL BACKGROUND**

13 10. Plaintiff is a former employee of Defendant City of Richmond. Plaintiff had  
14 worked as a Police Officer with the City of Richmond for over eight years at the time of his  
15 termination.

16 11. In July 2005, Defendant City of Richmond hired Plaintiff as a Police Officer I,  
17 with the Richmond Police Department. Plaintiff was employed as a peace officer, and, during his  
18 employment, Plaintiff performed his duties and responsibilities in an outstanding manner.  
19 Plaintiff received positive performance evaluations, and he was selected as a member of the  
20 SWAT team, performed duties as a firearms range master, and was a firearms instructor. Plaintiff  
21 received consistent praise from members of the public, as well as the management staff, and he  
22 was qualified to serve as the Acting Sergeant. At all relevant times, Plaintiff possessed the  
23 requisite skills in his position and was capable of performing the essential functions of his job.

24 12. Plaintiff completed his probation period, and, as a result, he had a protected  
25 property interest in his continued employment.

26 13. In 2006, Plaintiff separated from his wife after a short marriage, and he took  
27 affirmative measures to have his marriage annulled. Since then, Plaintiff's former wife has made  
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1 a series of false complaints against Plaintiff over the course of several years to the Richmond  
2 Police Department.

3 14. Despite these difficulties over the years with his former wife, Plaintiff diligently  
4 served as a Richmond Police Officer, and his employment record was outstanding.

5 15. As a result, Plaintiff was personally selected for a surveillance and protection  
6 detail, when the Chief of Police, Defendant Magnus, was subjected to several threats from the  
7 community. Plaintiff was assigned to protect Chief Magnus' home at night and the early morning  
8 hours.

9 16. On one of those evenings, Chief Magnus attempted to engage in an inappropriate,  
10 personal sexual relationship with Plaintiff. Chief Magnus, while dressed in questionable civilian  
11 attire, approached Plaintiff while walking his dog, and began touching Plaintiff inappropriately on  
12 his arm, and began rubbing Plaintiff on his upper leg, in an obvious sexual manner. Prior to this  
13 touching, Defendant Magnus had called Plaintiff's personal phone on a number of occasions,  
14 which made Plaintiff feel uncomfortable. When Defendant Magnus touched and caressed his  
15 arm, Plaintiff immediately informed Defendant Magnus that he was not interested in any sexual  
16 relationship with the Chief of Police, and he asked Defendant Magnus to stop calling him on his  
17 personal phone, and stop touching him, as it made Plaintiff feel very uncomfortable in the  
18 workplace. Plaintiff then immediately reported the misconduct to his supervising Lieutenant.

19 17. When Defendant Magnus became aware of this complaint, he was furious, and his  
20 entire demeanor and attitude towards Plaintiff changed. Although Plaintiff was considered one of  
21 the better performing officers in the department, Defendant Magnus engaged in a pattern of  
22 retaliatory conduct towards Plaintiff, with the ultimate goal of looking for any reason to support  
23 the termination of Plaintiff's employment.

24 18. After Plaintiff made complaints about Defendant Magnus's sexual advances,  
25 Defendants subjected Plaintiff to repeated adverse actions in the workplace, including but not  
26 limited to: (1) denying overtime for Plaintiff, (2) denying training for Plaintiff, (3) removing  
27 Plaintiff from his position on the SWAT team, (4) refusing to allow Plaintiff to serve as Acting  
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1 Sergeant, (5) refusing to select Plaintiff for a homicide position, even though Plaintiff had  
2 superior qualifications, (6) unilaterally audited Plaintiff's pay records, and demanding that he  
3 return part of his pay, (7) Defendant Magnus demanded that Plaintiff lie about an incident  
4 involving the senior leadership of the department, and, when Plaintiff refused to lie, Defendants  
5 attempted to transfer Plaintiff out of the Cease Fire program, and (8) subjecting Plaintiff to  
6 internal affairs investigations.

7 19. On or about September 23, 2012, Plaintiff was involved in an altercation with his  
8 former spouse, as part of a child custody exchange. Plaintiff's former wife struck him in the face  
9 and on the body. The Alameda County Sheriff's Department responded to the scene. During the  
10 course of the investigation, the Sheriff's Department took possession of eight firearms that  
11 Plaintiff had purchased in private firearm sales from other active duty Police Officers in the  
12 Richmond Police Department. Plaintiff was an avid firearm's collector. Plaintiff was never  
13 charged with any crime, as a result of this incident.

14 20. When Defendant Magnus became aware of this domestic investigation, he  
15 believed that he had found the right "incident" involving the Plaintiff to support a claim of  
16 termination, and he immediately placed Plaintiff under a pretext internal affairs investigation,  
17 which lasted more than a year.

18 21. Defendants conducted a biased internal affairs investigation, which only looked for  
19 reasons to support the termination of Plaintiff's employment. Although the evidence  
20 demonstrated that Plaintiff did nothing wrong, Defendants accused him of (1) domestic battery,  
21 claiming he was the "primary aggressor," when the evidence suggested otherwise, (2) placing a  
22 "condom" on his former wife's front door, even though there was no evidence to support this  
23 claim, and (3) taking possession of eight unregistered firearms, when the evidence showed it was  
24 the other Richmond Police Officers that had failed to document the private firearms sales with a  
25 federal firearms dealer. None of the other eight Police Officers, who were all non-Asian and  
26 primarily Caucasian, were terminated or disciplined in any manner whatsoever.

22. Then, when Plaintiff denied the charges during his interview with the internal affairs investigator, Defendant Magnus accused Plaintiff of “lying” to the investigator, and then terminated Plaintiff’s employment for alleged dishonesty.

23. Defendants failed to provide Plaintiff with any liberty interest hearing.

24. On or about September 24, 2013, Defendants issued a Skelly notice to Plaintiff, advising him that Defendant City of Richmond would be terminating his employment for domestic battery, defacing property by placing a condom on a door, possessing eight unregistered firearms, and lying to the investigator when Plaintiff denied the charges that were leveled against him.

25. Even though Plaintiff had lodged a formal complaint of sexual harassment against Chief Magnus, Defendant City of Richmond assigned Defendant Magnus as the proposed unbiased Skelly hearing officer, who would hear the evidence to determine whether or not Plaintiff should be fired.

26. Defendant Magnus was a biased and involved hearing officer, who should have never been assigned as an objective fact-finder to determine whether or not Plaintiff should be terminated from his long-term employment as a peace officer.

27. On or about December 9, 2013, Defendant Magnus recommended that Plaintiff be terminated for engaging in misconduct, and allegedly “lying” about it.

28. On or about December 11, 2013, Defendant Magnus’ recommendation was adopted by the City Manager for Defendant City of Richmond.

### **FIRST CAUSE OF ACTION**

(Violations of 42 U.S.C. Section 1983 – All Defendants & DOES 1 to 5)

29. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 28 of this Complaint as fully set forth herein.

30. In acting above, Defendants violated Plaintiff’s due process, speech, and petition rights under the First, Fifth, and Fourteenth Amendments to the United States Constitution, and, acting under color of authority, further violated Plaintiff’s rights under 42 U.S.C. Section 1983.

1           31. Defendants violated Plaintiff's due process rights, in that Defendants failed to  
2 provide Plaintiff with a liberty interest hearing, after accusing him of misconduct in the  
3 workplace.

4           32. Defendants further violated Plaintiff's due process rights when Defendants  
5 provided Plaintiff with a biased pre-termination hearing before an involved hearing officer, and  
6 then failed to provide Plaintiff with any post-termination hearing, thereby denying Plaintiff a  
7 protected property interest under the due process clause to the United States Constitution.

8           33. In acting above, Defendants further violated Plaintiff's due process rights under  
9 the Public Safety Officers Procedural Bill of Rights, Government Code Section 3300 et seq., in  
10 that Defendants terminated Plaintiff's employment without an adequate showing of good cause,  
11 and for merely being arrested for a misdemeanor crime, which occurred more than a year before  
12 the issuance of the Skelly notice.

13           34. Defendants violated Plaintiff's First Amendment rights, in that Defendants  
14 retaliated against Plaintiff for making complaints of public concern to Defendants, and terminated  
15 Plaintiff as a result of his complaints of sexual harassment.

16           35. Plaintiff is informed and believes that Defendant City of Richmond has a custom,  
17 policy, pattern, or practice of retaliating against employees of the Richmond Police Department,  
18 who make complaints of public concern.

19           36. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered loss  
20 of employment, indignity, great humiliation and emotional distress manifesting in physical  
21 symptoms.

22           37. Defendant's actions have caused and continue to cause Plaintiff substantial losses  
23 in earnings, significant reputation and professional injury, loss of promotional opportunities and  
24 other employment benefits, lost wages, attorneys' fees, future earnings and benefits, cost of suit,  
25 humiliation, embarrassment and anguish, all to his damage in an amount according to proof.

26           38. As to individual Defendant Magnus only, the acts of these said defendants as  
27 alleged herein, were intentional, oppressive, fraudulent, and done with ill will and intent to injure  
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1 Plaintiff and to cause Plaintiff mental anguish, anxiety, and distress. The defendants' acts were  
 2 done in conscious disregard of the risk of severe emotional harm to Plaintiff and with the intent to  
 3 injure Plaintiff, constituting oppression, fraud, malice under California Civil Code §3294,  
 4 entitling Plaintiff to punitive damages against these defendants only.

### 5 **SECOND CAUSE OF ACTION**

6 (Violations of FEHA – Discrimination – Defendant City of Richmond Only & DOES 6 to 10)

7 39. Plaintiff realleges and incorporates by reference Paragraphs 1 through 38 of this  
 8 Complaint as though fully set forth herein.

9 40. California Government Code § 12940, et. seq., provides that it is an unlawful  
 10 employment practice for an employer to discriminate on the basis of gender, race, or national  
 11 origin in the terms and conditions of employment.

12 41. Defendant City of Richmond violated Government Code § 12940 et seq with  
 13 regard to Plaintiff when it discriminated against Plaintiff on the basis of his race, national origin,  
 14 and gender.

15 42. Defendants' conduct toward Plaintiff as alleged above, constitutes an unlawful  
 16 employment practice in violation of California Government Code § 12940.

17 43. As a direct and proximate result of Defendant's conduct, Plaintiff has suffered loss  
 18 of employment, indignity, great humiliation and emotional distress manifesting in physical  
 19 symptoms.

20 44. Defendant's actions have caused and continue to cause Plaintiff substantial losses  
 21 in earnings, significant reputation and professional injury, loss of promotional opportunities and  
 22 other employment benefits, lost wages, attorneys' fees, medical expenses, future earnings and  
 23 benefits, cost of suit, humiliation, embarrassment and anguish, all to his damage in an amount  
 24 according to proof.

### 25 **THIRD CAUSE OF ACTION**

26 (Violations of FEHA – Retaliation – Defendant City of Richmond Only & DOES 6 to 10)



6            47. Defendant City of Richmond violated Government Code § 12940 with regard to  
7 Plaintiff when it engaged in adverse employment actions in retaliation for making internal  
8 complaints about Defendant Magnus's sexual advances to Plaintiff, including Plaintiff's  
9 complaints about the adverse actions that followed his refusal to engage in intimate sexual  
0 conduct with Defendant Magnus, who is the Chief of the entire police department.

49. As a direct and proximate result of Defendants' retaliatory conduct, Plaintiff has suffered loss of employment, indignity, great humiliation and emotional distress manifesting in physical symptoms.

6           50. Defendants' actions have caused and continue to cause Plaintiff substantial losses  
7 in earnings, significant reputation and professional injury, loss of promotional opportunities and  
8 other employment benefits, lost wages, attorneys' fees, medical expenses, future earnings and  
9 benefits, cost of suit, humiliation, embarrassment and anguish, all to his damage in an amount  
10 according to proof.

(Violations of FEHA – Harassment – All Defendants & DOES 1 to 5)

52. California Government Code § 12940(h) provides that it is an unlawful employment practice for an employer or any other person to harass or create a hostile work environment for an employee in the workplace.

53. Defendants violated Government Code § 12940 with regard to Plaintiff when Defendants harassed Plaintiff on the basis of sex, gender, and his sexual orientation, including refusing Defendant Magnus's sexual advances to Plaintiff, including both hostile work environment and quid pro quo.

54. Defendants' conduct toward Plaintiff as alleged above, constitutes an unlawful employment practice in violation of California Government Code § 12940.

55. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered loss of employment, indignity, great humiliation and emotional distress manifesting in physical symptoms.

56. Defendants' actions have caused and continue to cause Plaintiff substantial losses in earnings, significant reputation and professional injury, loss of promotional opportunities and other employment benefits, lost wages, attorneys' fees, medical expenses, future earnings and benefits, cost of suit, humiliation, embarrassment and anguish, all to his damage in an amount according to proof.

57. As to individual Defendant Magnus only, the acts of these said defendants as alleged herein, were intentional, oppressive, fraudulent, and done with ill will and intent to injure Plaintiff and to cause Plaintiff mental anguish, anxiety, and distress. The defendants' acts were done in conscious disregard of the risk of severe emotional harm to Plaintiff and with the intent to injure Plaintiff, constituting oppression, fraud, malice under California Civil Code §3294, entitling Plaintiff to punitive damages against these defendants only

#### **FIFTH CAUSE OF ACTION**

(Violations of the California Constitution – All Defendants & DOES 1 to 5)

58. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 57 of this Complaint as fully set forth herein.

59. Article I, §§ 2 and 7, of the California Constitution prohibit any person while acting under color of law to deprive and/or interfere with any other person's constitutional rights of free speech, to petition the government for redress, and due process.

60. In acting above, Defendants violated said rights under the California Constitution, when Defendants terminated Plaintiff based upon his freedom of speech, failed to provide Plaintiff with a liberty interest hearing, failed to provide Plaintiff with an unbiased pre-termination hearing before a neutral hearing officer, failed to provide Plaintiff with any post-termination hearing, and subjected Plaintiff to a biased workplace investigation.

61. As a direct and proximate result of Defendants' acts, Plaintiff seeks the equitable remedy of reinstatement with all back-pay and attorney's fees and costs.

### **PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for judgment against Defendants, and each of them as follows:

1. For general damages in an amount according to proof;
2. For special damages in an amount according to proof;
3. For prejudgment interest in an amount according to proof;
4. For punitive damages in an amount according to proof;
5. For equitable and/or injunctive relief;
6. For statutory penalties, if applicable;
7. For reasonable attorney's fees and cost of suit therein;
8. For such other and further relief as the court may deem proper.
9. **Plaintiff demands a trial by jury.**

Dated: April 2, 2015

BROWN | POORE LLP

By: //s// David M. Poore

David M. Poore  
Attorneys for Plaintiff